REMARKS

Applicant thanks the Examiner for the detailed Office Action dated April 22, 2005. Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 1-53 were pending in the application.

Claims 10, 20, 27, 32, and 40 are requested to be cancelled without prejudice or disclaimer.

Claims 1, 3, 11-12, 14-15, 18-19, 22, 28-29, 34, 39, 45-46, and 51-53 are currently being amended. Some of the claims have been amended to remove the term "at least" because Applicant believes that doing so increases the readability of the claims. Applicant also believes that the terms previously modified by "at least" should be interpreted as being modified by the term "at least." Applicant requests the Examiner and all others that may review this file to apply this interpretation.

After amending the claims as set forth above, claims 1-9, 11-19, 21-26, 28-31, 33-39, and 41-53 are now pending in this application.

Claim Rejections

In the Office Action, all of the claims were rejected either under 35 U.S.C. § 102(b) as being unpatentable over U.S. Patent No. 5,223,290 (Alden) or under 35 U.S.C. § 103(a) as being unpatentable over Alden in view of U.S. Patent No. 6,262,396 (Witt et al.). Applicants respectfully traverse the rejections as set forth below. Applicants note that claims 1, 15, 22, 29, 34, 39, 45, and 51 are in independent form. The remainder of the claims depend from these independent claims.

With regard to the rejections under 35 U.S.C. § 102(b), Applicant notes that all of the independent claims, as amended, recite a combination of subject matter that includes, *intra alia*,

either an electronic control unit that includes a plurality of operating programs for heating a corresponding plurality of food items (i.e., independent claims 1, 22, 29, 34, and 51), a heating element capable of being heated to an operating temperature within a time period on the order of seconds (i.e., independent claims 15 and 39), or a heating element that provides substantially on-demand use of the heating chamber to heat the food item (i.e., claim 45). As acknowledged in the Office Action, the subject matter in the independent claims is not identically shown in either Alden or Witt et al. Accordingly, Applicant requests that the rejection under 35 U.S.C. § 102(b) be withdrawn.

With regard to the rejections under 35 U.S.C. § 103(a), Applicant respectfully submits that there is no motivation, teaching, or suggestion to combine the subject matter Alden and Witt et al. to provide the claimed subject matter.

The legal standards under 35 U.S.C. § 103(a) are well-settled. In proceedings before the Patent and Trademark Office, the Office bears the burden of establishing a prima facie case of obviousness based upon the prior art. In re Piasecki, 745 F.2d 1468, 1471-72, 223 USPQ 785, 787-88 (Fed. Cir. 1984). "[The PTO] can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references." In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Further, satisfying this burden requires the Patent Office to make "particular findings . . . as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed." In re Kotzab, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000). In making these findings, the Patent Offie must consider each prior art reference in its entirety, including portions that would lead away from the claimed invention. W.L. Gore v. Garlock, Inc., 721 F.2d 1540, 1552, 220 USPQ 303, 312 (Fed. Cir. 1983).

Applicant respectfully submits that there is no motivation, teaching, or suggestion to combine the subject matter of Alden and Witt et al. to provide the claimed subject matter. In particular, the Patent Office has failed to provide "particular findings," as required by the Federal

Circuit, regarding why one of ordinary skill would be motivated to "adapt the heater and control means" from Witt et al. to the oven of Alden as alleged in the Office Action. In particular, the Patent Office has failed to provide particular findings regarding why one of ordinary skill in the art would combine the heater disclosed in Witt et al. with the oven in Alden when Alden teaches the use of heaters which minimize the required wattage (e.g., Alden discloses 7-8 watts/in^2) and Witt et al. teaches the use of much higher wattage heaters (e.g., Witt et al. discloses use of 1200 W to 2500 W heaters). See Alden, col. 2, lines 41-48; Witt et al., col. 4, line 61 to col. 5, line 3. Applicant notes that even though the value in Alden is disclosed as watts/area, the watts/area provided from the heaters in Witt et al. spaced 3-4 inches away from a food item (see Alden, col. 2, lines 49-52 for spacing of heater from food) would still be much greater than that disclosed in Alden.

Furthermore, the Patent Office has failed to provide particular findings regarding why one of ordinary skill in the art would combine the heater disclosed in Witt et al. with the oven in Alden when Alden teaches that the etched foil heater "provide[s] a controlled cooking environment in a predetermined wavelength range" of "4-5 microns" and Witt et al. teaches "a thin, high-intensity resistive ribbon element which heats up to an orange glow almost instantaneously (e.g., in less than about 1.0 or 0.5 seconds)" that, because of its ability to be rapidly heated and cooled, would be more difficult to provide a controlled cooking environment in a predetermined wavelength range of 4-5 microns. See Alden, col. 2, lines 41-45; col. 5, lines 41-44; col. 2, lines 14-21; Witt et al., col. 4, lines 40-43.

Moreover, the Patent Office has failed to provide particular findings regarding why one of ordinary skill in the art would combine the heater/control system from Witt et al. with the oven in Alden when Alden teaches that the oven is used to "cook a wide variety of foods including pizza, fish products, chicken products, and bakery products" and Witt et al. teaches that the oven device with its associated heater and control system are used to "finish" or "brown" the food products. See Alden, col. 2, lines 25-29; Witt et al., abstract. Finishing or browning food requires careful management of the heating elements to provide the desired level of heating without burning the

food, in contrast to simply cooking the food. Witt et al., col. 7, lines 2-7; col. 10, lines 7-14. The Patent Office has failed to provide particular findings why it would be desirable to use what is likely a more expensive complicated control system such as that in Witt et al., which is desirable in situations such as finishing and browning using a very rapid heating element that requires careful control of the heat to avoid burning the food, with an oven such as that in Alden which is used for cooking (as opposed to finishing or browning) and having a much slower responding heating element (see Alden, col. 5, lines 30-33; explaining that it takes six minutes to heat up the heating element in Alden), and therefore easier to control, heating element. There is no motivation to use the control system shown in Witt et al. with the oven shown in Alden.

Applicant respectfully requests that the rejection of the claims over Alden and/or Witt et al. be withdrawn. Applicant also submits that the claims that are dependent on the independent claims are patentable for at least the same reasons that the independent claims are patentable.

* * *

Applicant respectfully submits that each and every outstanding objection and rejection has been overcome, and the present Application is in a condition for allowance. Applicant requests reconsideration and allowance of the pending claims.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

Applicant respectfully puts the Patent Office and all others on notice that all arguments, representations, and/or amendments contained herein are only applicable to the present patent application and should not be considered when evaluating any other patent or patent application including any patents or patent applications which claim priority to this patent application and/or any patents or patent applications to which priority is claimed by this patent application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to

Atty Dkt. No. 032016-0132 Application No. 10/806,074

Deposit Account No. 06-1447. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 06-1447.

Respectfully submitted,

Date July 20, 2005 By _____

FOLEY & LARDNER LLP
Customer Number: 26371
Telephone: (414) 297-5718
Facsimile: (414) 297-4900

Scott C. Nielson
Attorney for Applicant
Registration No. 50,755